UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JERRY COOPER,

Plaintiff - Appellant,

and

MERRI COLE,

Plaintiff,

v.

SOUTHERN CALIFORNIA EDISON COMPANY; et al.,

Defendants - Appellees,

and

DAWAN GINN, an individual; et al.,

Defendants.

No. 03-57059

D.C. No. CV-00-02482-JNK

ORDER GRANTING MOTION TO FILE AMICUS BRIEF, AMENDING MEMORANDUM DISPOSITION, & DENYING PETITION FOR REHEARING AND REHEARING EN BANC

Before: D. W. NELSON, THOMAS, and TALLMAN, Circuit Judges.

The EEOC Motion to File an Amicus Brief in Support of the Appellant's Petition for Rehearing and Petition for Rehearing En Banc is GRANTED. The amicus brief received by the Court on April 14, 2006, may be filed.

The Memorandum Disposition filed on March 13, 2006, is amended as follows:

Page 4, lines 10-13: Replace the language, "He was moved from Units 2 and 3 to Unit 1, and from Unit 1 to the turbine deck, but since neither reduced his salary or job title, they were not adverse employment actions. See Vasquez v. County of Los Angeles, 349 F.3d 634 (9th Cir. 2003)." with the following text:

> "He was moved from Units 2 and 3 to Unit 1, and from Unit 1 to the turbine deck. In order to qualify as adverse employment actions protected by Title VII, these transfers must have been "reasonably likely to deter employees from engaging in protected activity." *Ray v. Henderson*, 217 F.3d 1234, 1243 (9th Cir. 2000). We described this standard in *Vasquez v. County of Los Angeles*, 349 F.3d 634 (9th Cir. 2003), as being more subjective than the hypothetical "reasonable employee" approach, and yet still having an objective component evidenced by the "reasonably likely" requirement. *Id*. at 646. Cooper's lateral transfer does not meet this standard, either objectively, as it neither reduced his salary nor changed his job title, or subjectively, as Cooper had himself requested the transfer to Unit 1 earlier. As for the transfer to the turbine deck specifically, we agree with the district court that Cooper has presented insufficient evidence that this resulted in a decrease in workload or promotion opportunities, and therefore fails to meet the objective component of the standard."

With this amendment, the panel has voted to deny the Petition for Rehearing. Judges Thomas and Tallman have voted to deny the Petition for Rehearing En Banc and Judge Nelson so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. FED. R. APP. P. 35.

The Petition for Rehearing and the Petition for Rehearing En Banc are DENIED.

No further petitions for rehearing or petitions for rehearing en banc shall be entertained. See General Order 5.3(a).